

SECOND REGULAR SESSION

SENATE BILL NO. 864

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 12, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3536S.02I

AN ACT

To repeal section 288.040, RSMo, and to enact in lieu thereof one new section relating to unemployment benefits for certain educational employees.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 288.040, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 288.040, to read as follows:

288.040. 1. A claimant who is unemployed and has been determined to
2 be an insured worker shall be eligible for benefits for any week only if the deputy
3 finds that:

4 (1) The claimant has registered for work at and thereafter has continued
5 to report at an employment office in accordance with such regulations as the
6 division may prescribe;

7 (2) The claimant is able to work and is available for work. No person
8 shall be deemed available for work unless such person has been and is actively
9 and earnestly seeking work. Upon the filing of an initial or renewed claim, and
10 prior to the filing of each weekly claim thereafter, the deputy shall notify each
11 claimant of the number of work search contacts required to constitute an active
12 search for work. No person shall be considered not available for work, pursuant
13 to this subdivision, solely because he or she is a substitute teacher or is on jury
14 duty. A claimant shall not be determined to be ineligible pursuant to this
15 subdivision because of not actively and earnestly seeking work if:

16 (a) The claimant is participating in training approved pursuant to Section
17 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

18 (b) The claimant is temporarily unemployed through no fault of his or her
19 own and has a definite recall date within eight weeks of his or her first day of
20 unemployment; however, upon application of the employer responsible for the

21 claimant's unemployment, such eight-week period may be extended not to exceed
22 a total of sixteen weeks at the discretion of the director;

23 (3) The claimant has reported in person to an office of the division as
24 directed by the deputy, but at least once every four weeks, except that a claimant
25 shall be exempted from the reporting requirement of this subdivision if:

26 (a) The claimant is claiming benefits in accordance with division
27 regulations dealing with partial or temporary total unemployment; or

28 (b) The claimant is temporarily unemployed through no fault of his or her
29 own and has a definite recall date within eight weeks of his or her first day of
30 unemployment; or

31 (c) The claimant resides in a county with an unemployment rate, as
32 published by the division, of ten percent or more and in which the county seat is
33 more than forty miles from the nearest division office;

34 (d) The director of the division of employment security has determined
35 that the claimant belongs to a group or class of workers whose opportunities for
36 reemployment will not be enhanced by reporting in person, or is prevented from
37 reporting due to emergency conditions that limit access by the general public to
38 an office that serves the area where the claimant resides, but only during the
39 time such circumstances exist.

40 Ineligibility pursuant to this subdivision shall begin on the first day of the week
41 which the claimant was scheduled to claim and shall end on the last day of the
42 week preceding the week during which the claimant does report in person to the
43 division's office;

44 (4) Prior to the first week of a period of total or partial unemployment for
45 which the claimant claims benefits he or she has been totally or partially
46 unemployed for a waiting period of one week. No more than one waiting week
47 will be required in any benefit year. During calendar year 2008 and each
48 calendar year thereafter, the one-week waiting period shall become compensable
49 once his or her remaining balance on the claim is equal to or less than the
50 compensable amount for the waiting period. No week shall be counted as a week
51 of total or partial unemployment for the purposes of this subsection unless it
52 occurs within the benefit year which includes the week with respect to which the
53 claimant claims benefits;

54 (5) The claimant has made a claim for benefits;

55 (6) The claimant is participating in reemployment services, such as job
56 search assistance services, as directed by the deputy if the claimant has been

57 determined to be likely to exhaust regular benefits and to need reemployment
58 services pursuant to a profiling system established by the division, unless the
59 deputy determines that:

60 (a) The individual has completed such reemployment services; or

61 (b) There is justifiable cause for the claimant's failure to participate in
62 such reemployment services.

63 2. A claimant shall be ineligible for waiting week credit or benefits for any
64 week for which the deputy finds he or she is or has been suspended by his or her
65 most recent employer for misconduct connected with his or her
66 work. Suspensions of four weeks or more shall be treated as discharges.

67 3. (1) Benefits based on "service in employment", defined in subsections
68 7 and 8 of section 288.034, shall be payable in the same amount, on the same
69 terms and subject to the same conditions as compensation payable on the basis
70 of other service subject to this law; except that:

71 (a) With respect to service performed in an instructional, research, or
72 principal administrative capacity for an educational institution, benefits shall not
73 be paid based on such services for any week of unemployment commencing during
74 the period between two successive academic years or terms, or during a similar
75 period between two regular but not successive terms, or during a period of paid
76 sabbatical leave provided for in the individual's contract, to any individual if such
77 individual performs such services in the first of such academic years (or terms)
78 and if there is a contract or a reasonable assurance that such individual will
79 perform services in any such capacity for any educational institution in the
80 second of such academic years or terms;

81 (b) With respect to services performed in any capacity (other than
82 instructional, research, or principal administrative capacity) for an educational
83 institution, benefits shall not be paid on the basis of such services to any
84 individual for any week which commences during a period between two successive
85 academic years or terms if such individual performs such services in the first of
86 such academic years or terms and there is a contract or a reasonable assurance
87 that such individual will perform such services in the second of such academic
88 years or terms;

89 (c) With respect to services described in paragraphs (a) and (b) of this
90 subdivision, benefits shall not be paid on the basis of such services to any
91 individual for any week which commences during an established and customary
92 vacation period or holiday recess if such individual performed such services in the

93 period immediately before such vacation period or holiday recess, and there is
94 reasonable assurance that such individual will perform such services immediately
95 following such vacation period or holiday recess;

96 (d) With respect to services described in paragraphs (a) and (b) of this
97 subdivision, benefits payable on the basis of services in any such capacity shall
98 be denied as specified in paragraphs (a), (b), and (c) of this subdivision to any
99 individual who performed such services at an educational institution while in the
100 employ of an educational service agency, and for this purpose the term
101 "educational service agency" means a governmental agency or governmental
102 entity which is established and operated exclusively for the purpose of providing
103 such services to one or more educational institutions;

104 (e) **With respect to services described in paragraphs (a) and (b)**
105 **of this subdivision, benefits shall not be paid on the basis of such**
106 **services to any individual who voluntarily resigns during the period of**
107 **the individual's contract. If the effective date of the individual's**
108 **resignation begins upon or after expiration of the contract terms, the**
109 **resignation shall be deemed a refusal of acceptance of reasonable**
110 **assurance of continued performance of services for all successive**
111 **academic years or terms, and benefits shall not be paid.**

112 (2) If compensation is denied for any week pursuant to paragraph (b) or
113 (d) of subdivision (1) of this subsection, to any individual performing services at
114 an educational institution in any capacity (other than instructional, research or
115 principal administrative capacity), and such individual was not offered an
116 opportunity to perform such services for the second of such academic years or
117 terms, such individual shall be entitled to a retroactive payment of the
118 compensation for each week for which the individual filed a timely claim for
119 compensation and for which compensation was denied solely by reason of
120 paragraph (b) or (d) of subdivision (1) of this subsection.

121 4. (1) A claimant shall be ineligible for waiting week credit, benefits or
122 shared work benefits for any week for which he or she is receiving or has received
123 remuneration exceeding his or her weekly benefit amount or shared work benefit
124 amount in the form of:

125 (a) Compensation for temporary partial disability pursuant to the workers'
126 compensation law of any state or pursuant to a similar law of the United States;

127 (b) A governmental or other pension, retirement or retired pay, annuity,
128 or other similar periodic payment which is based on the previous work of such

129 claimant to the extent that such payment is provided from funds provided by a
130 base period or chargeable employer pursuant to a plan maintained or contributed
131 to by such employer; but, except for such payments made pursuant to the Social
132 Security Act or the Railroad Retirement Act of 1974 (or the corresponding
133 provisions of prior law), the provisions of this paragraph shall not apply if the
134 services performed for such employer by the claimant after the beginning of the
135 base period (or remuneration for such services) do not affect eligibility for or
136 increase the amount of such pension, retirement or retired pay, annuity or similar
137 payment.

138 (2) If the remuneration referred to in this subsection is less than the
139 benefits which would otherwise be due, the claimant shall be entitled to receive
140 for such week, if otherwise eligible, benefits reduced by the amount of such
141 remuneration, and, if such benefit is not a multiple of one dollar, such amount
142 shall be lowered to the next multiple of one dollar.

143 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this
144 subsection, if a claimant has contributed in any way to the Social Security Act or
145 the Railroad Retirement Act of 1974, or the corresponding provisions of prior law,
146 no part of the payments received pursuant to such federal law shall be deductible
147 from the amount of benefits received pursuant to this chapter.

148 5. A claimant shall be ineligible for waiting week credit or benefits for any
149 week for which or a part of which he or she has received or is seeking
150 unemployment benefits pursuant to an unemployment insurance law of another
151 state or the United States; provided, that if it be finally determined that the
152 claimant is not entitled to such unemployment benefits, such ineligibility shall
153 not apply.

154 6. (1) A claimant shall be ineligible for waiting week credit or benefits for
155 any week for which the deputy finds that such claimant's total or partial
156 unemployment is due to a stoppage of work which exists because of a labor
157 dispute in the factory, establishment or other premises in which such claimant
158 is or was last employed. In the event the claimant secures other employment
159 from which he or she is separated during the existence of the labor dispute, the
160 claimant must have obtained bona fide employment as a permanent employee for
161 at least the major part of each of two weeks in such subsequent employment to
162 terminate his or her ineligibility. If, in any case, separate branches of work
163 which are commonly conducted as separate businesses at separate premises are
164 conducted in separate departments of the same premises, each such department

165 shall for the purposes of this subsection be deemed to be a separate factory,
166 establishment or other premises. This subsection shall not apply if it is shown
167 to the satisfaction of the deputy that:

168 (a) The claimant is not participating in or financing or directly interested
169 in the labor dispute which caused the stoppage of work; and

170 (b) The claimant does not belong to a grade or class of workers of which,
171 immediately preceding the commencement of the stoppage, there were members
172 employed at the premises at which the stoppage occurs, any of whom are
173 participating in or financing or directly interested in the dispute.

174 (2) "Stoppage of work" as used in this subsection means a substantial
175 diminution of the activities, production or services at the establishment, plant,
176 factory or premises of the employing unit. This definition shall not apply to a
177 strike where the employees in the bargaining unit who initiated the strike are
178 participating in the strike. Such employees shall not be eligible for waiting week
179 credit or benefits during the period when the strike is in effect, regardless of
180 diminution, unless the employer has been found guilty of an unfair labor practice
181 by the National Labor Relations Board or a federal court of law for an act or
182 actions preceding or during the strike.

183 7. On or after January 1, 1978, benefits shall not be paid to any
184 individual on the basis of any services, substantially all of which consist of
185 participating in sports or athletic events or training or preparing to so
186 participate, for any week which commences during the period between two
187 successive sport seasons (or similar periods) if such individual performed such
188 services in the first of such seasons (or similar periods) and there is a reasonable
189 assurance that such individual will perform such services in the later of such
190 seasons (or similar periods).

191 8. Benefits shall not be payable on the basis of services performed by an
192 alien, unless such alien is an individual who was lawfully admitted for permanent
193 residence at the time such services were performed, was lawfully present for
194 purposes of performing such services, or was permanently residing in the United
195 States under color of law at the time such services were performed (including an
196 alien who was lawfully present in the United States as a result of the application
197 of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

198 (1) Any data or information required of individuals applying for benefits
199 to determine whether benefits are not payable to them because of their alien
200 status shall be uniformly required from all applicants for benefits.

201 (2) In the case of an individual whose application for benefits would
202 otherwise be approved, no determination that benefits to such individual are not
203 payable because of such individual's alien status shall be made except upon a
204 preponderance of the evidence.

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